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John Bassett Moore, a Member of the Permanent Court of International Justice

IT IS highly gratifying that John Bassett Moore is among the fifteen eminent jurists elected members of the Permanent Court of International Justice, which, we are informed, is to convene for its first session on January 30, 1922, at The Hague.

For many years Professor Moore, residing in New York and frequently visiting Washington, has been identified with important international interests. Since 1913 he has been a member of the Permanent Court of International Arbitration from which the new court is a development. From the year 1891 he has lectured at Columbia University and conducted graduate study of international law and diplomacy; and no instructor has been more admired and beloved of his students. He is author or editor of works on international law and diplomacy of the highest excellence and value and of incomparable extent. The Secretary of State has often called upon him for advice in foreign affairs, and at important times has associated him in office as Assistant Secretary of State or counselor in the department or as representative of the department or of other public interests in Europe or South America. In 1898 at Paris he was secretary and counsel for the United States on the Spanish peace treaty commission. In 1910 he was United States delegate to the International American Conference at Buenos Aires and plenipotentiary at the Chilean centenary celebrations at Santiago. Independently of many services to his own government, other governments have from time to time sought his counsel, and numerous and consequential matters of foreign commerce and finance have been brought to him for legal advice.

A career notable for so many and distinguished achievements would incline those unacquainted with Professor Moore to think



John Barth Moore

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of him as a man of advanced age, but he was only in his sixtieth year when elected to the International Court of Justice. The portrait we are privileged to reproduce was taken in that year. It is the portrait of a man in the prime of vitality and power, a man of affairs, of wisdom, of culture and of friendliness.

Education at the University of Virginia, where the young Mr. Moore was graduated in 1880, cultivated in him what might be spoken of as a very true and intimate sensibility toward the living and growing principles of politics and jurisprudence. The causative forces operating for justice and welfare, rather than their incidents, came to be thoroughly known to him; the vitality and power of the law, rather than its accumulating records. Besides, there is inculcated at Virginia a true and generous appreciation of the excellencies and attainments of other men. For all that one is diligent and even strenuous in his important work, he may enjoy leisure and abound in geniality. A university so establishing among her students sound and liberal thought upon the fundamentals of public welfare and so encouraging generous esteem of human character as a principal factor in progress may well be honored, as the University of Virginia is honored, in a long and illustrious line of American statesmen, her graduates.

It appears that Mr. Moore gave direction of his life interest toward international law by entering service in the Department of State in his twenty-fifth year. In the same year, 1885, the very notable Dr. Francis Wharton, forty years the senior of Mr. Moore, came into the department as solicitor; and official association of Dr. Wharton and Mr. Moore, the latter soon becoming, by reason of his very superior qualifications, Third Assistant Secretary of State, ripened into a most intimate friendship. In this period Mr. Moore made a very authoritative report upon the law of extraterritorial crime, disposing of difficulties that had arisen from the Cutting case in Mexico; and he also then gathered material for the well-known volumes that appeared in 1891 entitled "Extradition and Interstate Rendition." The subject of conflict of laws, as related especially to interests of United States citizens abroad, much engaged both Dr. Wharton and his associate, and from this developed the publication several years later of the Moore "American Notes" to Dicey's "Conflict of Laws." Other work of these associates was consummated in Wharton's "Digest of International Law," three volumes, 1886, and especi-

ally in Wharton's edition of the "Diplomatic Correspondence of the American Revolution," five volumes, 1889, the publication of which Dr. Wharton did not live to accomplish and Mr. Moore finally edited. With the preface of the latter work Mr. Moore wrote "A Brief Sketch of the Life of Francis Wharton," which contains, together with a very noble tribute to his friend, a valuation of Dr. Wharton's methods of study of international law. From these words, written near the beginning of Professor Moore's own career, those who frequently refer to his works will feel that his own methods of research and production, confirmed by and emulating those of his friend, Dr. Wharton, are to be well understood:

"Learned both in history and in jurisprudence, and with a wide and established reputation as a publicist, he was able to speak as one having authority. He was not compelled to search for principles and precedents; he had already reduced them to possession, and it was only necessary for him to apply them. The value of such a preparation can be estimated only when we consider the distinctive character of international law as a branch of jurisprudence. The average practitioner, trained in the strict school of the common law and accustomed to the technical disputations of the ordinary judicial courts, finds himself, when called upon to deal with matters involving international law, confronted with a new type of questions, in the solution of which his previous education affords him little assistance. In reality one of his first tasks will be to rid his mind, so far as he may be able, of its prepossession for technical reasoning. The books which he has been accustomed to consult, with a view to obtain a 'case in point,' can no longer be accepted as guides. Even if he should find in the courts of his own country a decision upon the question which he has under consideration, he would then be required to ascertain whether that decision had been accepted as being in accordance with the principles of international law; for in such matters one nation is not bound to accept as conclusive the decisions of the courts of another. He would then find it necessary to embark upon the study of history and the works of publicists, and to apply with such guides the principles of reason and justice. Although in this department of learning the United States can claim such distinguished names as those of Wheaton, Story, Kent, Lawrence, Field, and Wharton, the study of international law has for the most part been neglected in this country. . . . No attempt is made to trace the history of the subject, and the remarkable contribution of the Government of the United States to its progressive development is almost wholly overlooked. A gentleman not long since in the diplomatic service of the United States recently told the writer

that one of the most distinguished publicists of Europe declared to him that he found more to interest and instruct him in the annual volume of the Foreign Relations of the United States than in any other current publication on international subjects. This, he said, was due to the freedom and originality with which questions were treated; a circumstance in large measure attributable to the unique position of the United States in the family of nations."

These methods and purposes of study of international law have been admirably exemplified in the great works that have since appeared under the authorship and direction of Professor Moore, especially the six volume "History and Digest of International Arbitrations" in 1898 (an even more comprehensive work on that subject being in hand in recent years), and the eight volume "Digest of International Law" in 1906. The selection of materials in these compendious volumes, with summarizing, analyzing and reasoning upon the facts and the law, and the statements of the eventual dispositions of the matters in issue, are the personal work of Professor Moore. These labors greatly impress us with their comprehensiveness of subjects and with the excellence of consideration and of presentation everywhere found in them.

Professor Moore's conception of the purpose of writing of history is shown in his editing of the works of James Buchanan, twelve volumes, 1908, and in his numerous contributions to the history of diplomacy. His address at Brown University in 1914 on Secretary of State William L. Marcy gives many facts of that remarkable career which had not been generally known. Professor Moore lectured at Johns Hopkins University in 1912 on "Four Phases of American Development: Federalism, Democracy, Imperialism, Expansion." In the preface to these lectures he says:

"Their object is to give, not a chronological detail of related or unrelated incidents, but rather a general survey of important movements, explained in the light of the causative facts, whether these be particular acts, or human traits and tendencies disclosed by men acting in the mass or individually. This is, in the writer's opinion, the historian's primary task. To frame indictments, to condemn and exculpate, to distribute censures and pronounce encomiums, on the strength of preconceptions as to what ought to have taken place, belongs to the historical moralist, the nobility of whose aims is supposed to justify him in exacting from the past, as the price of its exoneration, an anticipatory conformity to his own views. The function

of the historian, if apparently less exalted, is more truthful. It is also more difficult of performance, and requires a wider range of thought, of investigation and of sympathies. History is the drama of the ages reduced to writing. The historian, like the dramatist, may also be and in a qualified sense necessarily is a moralist, since every picture of life conveys a lesson of some kind. But his first duty is that of exposition. He deals in realities. His chief end is to recreate the past, so that the reader may live in it and, seeing things as they were, understand things as they are."

Diplomacy as a field adjacent to history has been given many years of research, observation, thought and writing. "A Hundred Years of American Diplomacy" was the subject of an address before the American Bar Association at Saratoga in 1900. A book published in 1905 and to some extent rewritten and published in 1918, was entitled "American Diplomacy, Its Spirit and Achievements." From the latter we quote:

"American diplomacy was also employed in the advancement of the principle of legality. American statesmen sought to regulate the relations of nations by law, not only as a measure for protection of the weak against the aggressions of the strong, but also as the only means of assuring the peace of the world."

Legal training and experience, in his estimation, are desirable for one proceeding to advanced study and to the application of international law. Satisfactory and practical study of principles of international law can best be done with the guidance of instructors so trained and experienced. International law is desirable among law school subjects and for admission to the bar. Counsel in international law cases, especially on appeal, are likely to be among the superior men, and the opinions of the courts on international law matters are likely to be rendered by very eminently qualified judges.

Even the beginning students observe that whereas the few earlier United States Supreme Court cases on international law may cite the decisions of Lord Stowell and the works of Vattel (the latter usually in an early Philadelphia edition) as probably the only authorities available, the number of cases in the Supreme Court involving international law has greatly increased and the consideration of authorities has become far more elaborate, until, as in the case of *The Appam*, in 1917, the experience and reasoning of very many able men as to international situations and their bearing on individual rights are concentrated.

For an example of Professor Moore's examination of leading cases, apart from the frequent elucidating comments in his general works, it is interesting to read his centenary address on Chief Justice John Marshall, given in 1901 before the State Bar Association of Delaware, wherein the cases of *Brown v. United States* and *United States v. Percheman* are used to show the developing thought of the great justice from his earlier to his later years.

But erudition in international law and power as a counselor to government interests have not separated Professor Moore from his very true appreciation of the merits of public opinion and of the certainty of its control of international relations. The misinformation and misconceptions of international matters propagated so diligently and extensively by the ignorant or the interested in recent years have vexed and even caused apprehension to many of our well established leaders. Some years before the world conflict it was evident that the relations of our people abroad were multiplying in excess of the increase of knowledge among us generally of our international rights and obligations. We came to delude ourselves that we had participated very little or not at all in world affairs, whereas the influence of our people had been one of the few predominant factors for progress and welfare of the nations, especially in Europe, South America and Eastern Asia at several important epochs. The impression has too much prevailed among us that we have desired peace more than others, and that in reasonableness and practical measures we may regard ourselves as exemplary. The true and matter-of-fact situation as to all our foreign relations is very corrective and sobering; it is also assuring and encouraging. And whatever the effort and constancy over many years requisite for service to one's country through knowledge and prudence as to foreign affairs, their necessity and high value, especially at this constructive period, are coming again to be well understood by our people. The idea of arbitrating international differences has long had strong hold on the American public, but to take only one instance of un-readiness to act, the British Government six times offered to arbitrate the northwestern water boundary in the vicinity of Vancouver and Seattle before we accepted, and even then we imposed almost impossible conditions.

Professor Moore has said in speaking of international conciliation:

"There is no device by which peace can be preserved unless nations co-operate in making it effective. Sixteen years ago, when the nations agreed to the establishment of the permanent Court at The Hague, it seemed to many that the millennium had come; and they certainly were justified in thinking that a great step forward had been taken. Gradually the whole world was brought into the arrangement; but, with the lapse of time, it became apparent that, although a 'world court' had been established, the spirit of co-operation was lacking to make it thoroughly effective. Wars broke out without resort to it and when it was sought to render the resort obligatory, nations were found to be indisposed to bind themselves to submit questions of obvious importance, such as were likely to produce a conflict. . . . The fact cannot be too often or too strongly stated that, for the preservation of order, national or international, we cannot rely upon force alone. Force is not an end; it is merely a means to an end. Situations often arise in which the resort to forcible measures tends to provoke conflict rather than to prevent it. . . . We must not forget that, back of all effort, moral and physical, lie the feelings, the sentiments, the aspirations of humanity; and it is only by the organization of forces, moral or physical, in such manner as to assure justice and contentment through co-operation, that widespread outbreaks of violence can be avoided. . . . Questions of war and of peace depend, and will continue to depend, not so much upon the size of military establishments as upon the cultivation of the spirit and habit of justice, of self-control, of reciprocal recognition of rights and of forbearance. If these things be not practiced; if impatience takes the place of deliberation; if insistent and one-sided demands are substituted for measures of accommodation; if troubled situations are permitted to furnish the occasion for exceptional exactions; if differences in race and in national traits and customs are made to serve as the basis of unfriendly criticism, railing accusations and violent suspicions—then all plans for the preservation of peace will prove to be as so much waste paper. Outside the state, just as within the state, peace will be permanently preserved only by carrying into our dealings one with another the sentiment of fraternity and the spirit of conciliation."

For opinions of this nature, their wisdom, character, timeliness and power, and for the splendid achievements of Professor Moore as a scholar and a statesman, and for the appreciation and authority that distinguish his name among other peoples as well as among his own, we rejoice in his acceptance of election to the Permanent Court of International Justice. We of California, remembering the pleasure and honor of his visiting us in 1915,

and feeling that, with the newer and larger problems of the Pacific Ocean imminently upon our nation, we are well assured and amply empowered only by faithful adherence to the principles of international justice and amity to which Professor Moore has so long and successfully been devoted, send to him our best and most cordial greetings. We wish him many happy years of further achievement in advancing international law and justice.

Frank E. Hinckley

San Francisco